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PATENT

41744

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of

Robin U. Roberts et al.

Serial No.: 09/929,031

Filed: August 15, 2001

For: A SYSTEM AND METHOD FOR
PERFORMING SOFT HANDOFF IN A
WIRELESS DATA NETWORK

Group Art Unit: 2661

Examiner: Not Assigned

ATTN: Mark Polutta, Esq.

PETITION UNDER 37 C.F.R. § 1.181 TO CONSIDER REQUEST TO
RESCIND PREVIOUS NONPUBLICATION REQUEST SUFFICIENT TO
MEET NOTICE REQUIREMENT SET FORTH IN 35 U.S.C. § 122(b), OR,
IN THE ALTERNATIVE, PETITION TO REVIVE UNDER 37 C.F.R.
§ 1.137(b) DUE TO UNINTENTIONAL ABANDONMENT

Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicant hereby petitions the Director to consider the Request To Rescind Previous Nonpublication Request that was filed in the above-identified application on August 15, 2002 sufficient to meet the Notice requirement set forth in 35 U.S.C. § 122(b). A copy of the Request to Rescind as filed is attached, along with a copy of the accompanying post card date stamped by the U.S. Patent and Trademark Office. Also submitted herewith is a newly executed revised Request to Rescind form that includes the additional language added by the U.S. Patent and Trademark Office in a note near the bottom of the form, which reads as follows:

Note: Filing this rescission of a previous nonpublication request is considered the notice of a subsequent foreign or International filing required by 35 USC

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122(b)(2)(B)(iii) and 37 CFR 1.213(c) if this rescission is filed no later than forty-five days (45) days after the date of filing of such foreign or international application. See 37 CFR 1.137(f) if a notice of subsequent foreign or International filing required by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is not filed within forty-five days (45) days after the date of filing of the foreign or international application.

Applicant respectfully submits that this additional language is intended to explicitly state to the party completing the revised Request to Rescind form ("the executing party") what was already implicit in the previous form, namely, that the filing of the Request to Rescind is tacit notice to the Director that the subject application is being filed internationally and/or in one or more foreign states. Applicant respectfully notes that the additional language does not require the executing party to identify the international and/or foreign jurisdiction(s) in which the application has been filed and, in fact, does not even require the executing party to identify that such a filing has indeed occurred.

In this regard, Applicant respectfully notes that the language of 35 U.S.C. §122(b) does not specify a format in which the notice must be given. Accordingly, Applicant respectfully submits that the Request to Rescind itself and, in particular, the timing of the filing of the request to rescind (i.e., on the one year anniversary date of the U.S. filing date of the subject application) is *de facto* notice that one or more foreign or international filings have occurred. Moreover, Applicant notes that the subject application was only filed internationally in the PCT Receiving Office of the U.S. Patent and Trademark Office. Applicant therefore submits that because no specific notice format is provided in 35 U.S.C. §122(b), the filing of an international application claiming benefit from the above-identified in the PCT Receiving Office can also be deemed sufficient notice to the Director under a reasonable interpretation of the Statute.

Furthermore, Applicant respectfully notes that 35 U.S.C. §122(b) reads as follows:

A failure of the applicant to provide [foreign filing] notice within the prescribed period shall result in the application being regarded as abandoned, *unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional* (emphasis added).

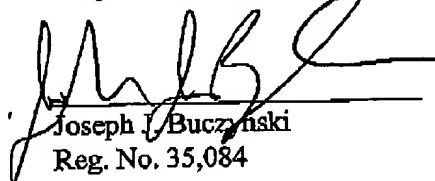
Clearly, according to 35 U.S.C. §122(b), an application is not abandoned, if the Director is satisfied that the delay in submitting the notice was unintentional. By using the phrase "the application being regarded as abandoned, unless", the drafters of the statute clearly wanted the application to become abandoned only in instances where the delay was intentional. If the delay was unintentional, shown to the satisfaction of the Director, the application was never abandoned.

Therefore, for all the above reasons, Applicant respectfully requests that the Director find that the subject application was not abandoned.

However, notwithstanding the above, should the Director find the facts discussed above to be insufficient to enable granting of this Petition, Applicant respectfully requests that the Director provide notice to that effect, and consider this Petition in the alternative as a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b). Applicant respectfully submits that for the reasons stated above, Applicant did not at any time intend to abandon the subject application and, on the contrary, has taken every effort, including the filing of this Petition, to maintain the subject application in full force.

The Director is hereby authorized to charge the Petition fee under 37 C.F.R. §1.17(h) or under 37 C.F.R. §1.17(m) to Deposit Account No. 18-2220. The Director is also invited to contact the undersigned at the number indicated below for any further information or clarification deemed necessary.

Respectfully Submitted,


Joseph J. Buczynski
Reg. No. 35,084

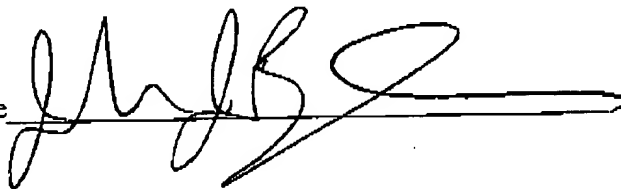
Roylance, Abrams, Berdo & Goodman, L.L.P.
1300 19th Street, N.W., Suite 600
Washington, D.C. 20036
Telephone: (202) 659-9076
Facsimile: (202) 659-9344

Dated: November 12, 2002

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office (Fax No. (703)746-3465) on November 12, 2002. Typed or printed name of person signing this certificate Joseph J. Buczynski.

Signature



Due Date _____ Today's Date Aug. 15, 2002

USSN/USP 09/329,031 RAB&G FILE NO. 41744 BY: JJD, eb

In Re Robin M. Roberts et al.

For A System and Method for Performing Soft Handoff in a Wireless Data Network

The following was received in the U.S. Patent & Trademark Office on the date stamped hereon:

<input type="checkbox"/> Check for \$ _____	<input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Response
<input type="checkbox"/> Specification _____ pgs. _____ claims	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Combined Decl., Petition & Power	<input type="checkbox"/> Brief <input type="checkbox"/> Req. Oral Hearing
<input type="checkbox"/> Assignment	<input type="checkbox"/> Issue Fee Transmittal
<input type="checkbox"/> Drawings _____ Sheets <input type="checkbox"/> Formal <input type="checkbox"/> Informal	<input type="checkbox"/> Trademark Renewal Application
<input type="checkbox"/> Small Entity Statement	<input type="checkbox"/> Decl. of Use <input type="checkbox"/> 8 <input type="checkbox"/> 15
<input type="checkbox"/> Claim for Priority & <input type="checkbox"/> Document	<input type="checkbox"/> Petition to Extend _____ mos./days
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Completion of Application
<input type="checkbox"/> Trademark Application & _____ Specimens	<input checked="" type="checkbox"/> <u>Req. to Respond Previous</u>
<input type="checkbox"/> Rule 53(b) Appln. <input type="checkbox"/> Rule 53(d) Appln. (CPA)	<input checked="" type="checkbox"/> <u>Nonpublication Req.</u>
	<input type="checkbox"/> Due Date Not Related To Response

35 U.S.C. 122(a)(2)(B)(i)

Stamp: OIPE AUG 15 2002

PTO/SB/36 (11-00)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

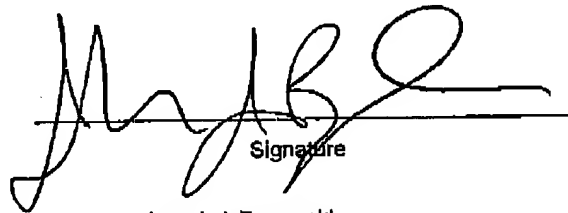
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**REQUEST TO RESCIND PREVIOUS
NONPUBLICATION REQUEST
35 U.S.C. 122(b)(2)(B)(ii)**

Application Number	09/929,031
Filing Date	August 15, 2001
First Named Inventor	Robin U. Roberts et al.
Title	A System and Method for Performing Soft Handoff in a Wireless Data Network
Atty Docket Number	41744
Group Art Unit	2661
Examiner	Not Assigned

I hereby **rescind** the previous request that the above-identified application not be published under 35 U.S.C. 122(b).

August 15, 2002
Date


Signature

Joseph J. Buczynski

Typed or printed name

This request must be signed in compliance with 37 CFR 1.33(b).

Burden Hour Statement: This collection of information is required by 37 CFR 1.213(b). The information is used by the public to rescind a previously filed request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that rescission). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner For Patents, Box PG Pub, Washington, DC 20231, or facsimile transmitted to the U.S. Patent and Trademark Office on: November 12, 2002

Name (Print/Type) Joseph J. Buczynski

Signature 

Date

November 12, 2002

Burden Hour Statement: This collection of information is required by 37 CFR 1.213(b). The information is used by the public to rescind a previously filed request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that rescission). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.